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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,563	07/25/2003	Daniel J. Kessler	109889	9337
25944	7590	01/03/2005		
OLIFF & BERRIDGE, PLC P.O. BOX 19928 ALEXANDRIA, VA 22320			EXAMINER HSIEH, SHIH YUNG	
			ART UNIT 2837	PAPER NUMBER

DATE MAILED: 01/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/626,563

Applicant(s)

KESSLER, DANIEL J.

Examiner

Shih-yung Hsieh

Art Unit

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/25/03, 1/28/04</u> . | 6) <input type="checkbox"/> Other: ____. |

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1. Claims 9 and 17 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim.

Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claims 9 and 17 repeat the limitations of claims 1 and 10, and fail to further limit the subject matter of previous claims 1 and 10.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2, 6-10, and 14-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Messina (4,000,678).

Regarding claims 1, 9-10, and 17, Messina discloses a protective instrument cover, comprising a front portion (10) that extends over substantially an entire front surface of an instrument body (Fig. 1); and means/fastener (22) for attaching the front portion to the front surface of the instrument body without requiring removal of hardware of the instrument body.

Regarding claim 2, Messina discloses the claimed invention (col. 1 line 44).

Regarding claims 6-7, and 14-15, Messina discloses the claimed invention (Fig.

1).

Regarding claims 8 and 16, Messina discloses the claimed invention (22).

Regarding claim 18, see above statement. Messina also discloses the back portion (11), and side portion (Figs. 1-3 and 5, and col. 1, lines 59-66).

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Messina in view of Wise, Jr. (6,576,823).

Regarding claims 3 and 11, Messina discloses the claimed invention including the teaching of using suitable material for the cover except that the material comprises neoprene.

Wise, Jr. teaches using neoprene material (col. 4, lines 7-8) as a non-slip cover for a musical instrument. It would have been obvious to one having ordinary skill in the art to modify Messina's cover as taught by Wise, Jr. to include the material comprising neoprene for the purpose of providing a non-slip cover.

6. Claims 4 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Messina in view of Britto et al. (5,763,796).

Regarding claims 4 and 12, Messina discloses the claimed invention including the teaching of using suitable material for the cover except that the material comprises spandex.

Britto et al. teach using spandex material (col. 4, lines 24-25) as a stretching cover for a tightly cover of a musical instrument. It would have been obvious to one having ordinary skill in the art to modify Messina's cover as taught by Britto et al. to include the material comprising spandex for the purpose of providing a stretching cover for a tightly cover of a musical instrument.

7. Claims 5 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Messina in view of Toth (3,877,501).

Regarding claims 5 and 13, Messina discloses the claimed invention including the teaching of using suitable material for the cover except that the material comprises latex.

Toth teaches using latex material (col. 2, lines 20-22, and Fig. 1) as a stretching cover for a musical instrument. It would have been obvious to one having ordinary skill in the art to modify Messina's cover as taught by Toth to include the material comprising latex for the purpose of providing a stretching cover for a musical instrument.


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shih-yung Hsieh whose telephone number is 571-272-2065. The examiner can normally be reached on 7:00-3:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on 571-272-2107. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

syh


SHIH-YUNG HSIEH
PRIMARY EXAMINER